Washington Farm Labor Association

EMPLOYER ESSENTIALS

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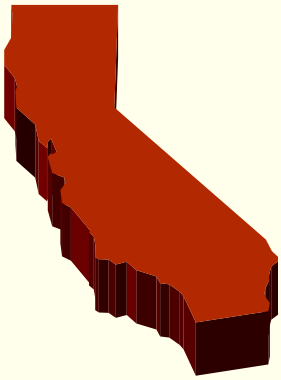
Rest Break Requirement - News From California

The law in Washington is clear: agricultural employers must provide workers with a 10 minute paid rest break for every four hours worked, and the rest break should be scheduled sometime in the middle of the four hour period.



If you terminate a worker under less than optimal circumstances, don't be surprised to see a claim for unpaid wages to the tune of 20 minutes per day for every day that the worker was employed. If the employee worked for you full time for two years and earned $10 per hour, the wage claim would be just under $2,000. But under Washington wage laws, the claim could be doubled and include attorney fees.

One bright note: The California Supreme Court ruled that an employer need not guarantee that the worker took the break, only that the employer offered it. The court concluded the employer's obligation is to relieve its employees of all duty during meal periods, leaving the employees at liberty to use the period for whatever purpose they desire. However, the court said, an employer need not ensure no work is done.

If the rationale of the California court is applied to Washington, it would mean: an employer would need to show a rest break program was in place; workers were informed of the right; and workers were afforded the opportunity to take the break. It would resolve an unanswered question in Washington, especially for employers who pay workers on a piece rate basis. Many piece rate workers would prefer to take rest breaks during lunch or at some time other than what is scheduled by the employer.

NLRB Poster Mess: Court Blocks Union Organizing - Again

On April 10, a federal appeals court temporarily blocked the National Labor Relations Board (NLRB) from making millions of businesses put up posters informing workers of their right to form a union.

The rule requiring most private employers to display the posters was supposed to take effect on April 30, but the U.S. Court of Appeals for the District of Columbia said that can't happen until legal questions are resolved.

The NLRB originally mandated employers post an 11" by 17" poster explaining worker rights to collectively bargain, and specified that it would be an unfair labor practice if the employer did not post the notice.

The temporary injunction followed a federal judge's ruling in South Carolina that the labor board exceeded congressional authority when it approved the poster requirement in 2011. A federal judge in Washington,

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D.C., had previously found the NLRB rule acceptable, but limited how the agency could enforce it.

NLRB chairman Mark Pearce said the board would instruct its regional offices not to apply the poster rule while litigation is pending. He said the board would appeal the adverse South Carolina ruling, as well as the part of the Washington, D.C., ruling that restricts how the rule can be enforced.

Agriculture workers are not covered by the National Labor Relations Act, and therefore agriculture employers are exempt from the requirement. If you pack fruit that is not grown in the orchard that you own, your employees are covered by the NLRA and the posting will be required. If all of the fruit that you pack is grown exclusively on the orchards owned by the person who owns the packing house, your employees are probably exempt from the NLRA.

It is no secret that the NLRB is interested in providing labor unions with another tool for organizing, and making the failure to post an unfair labor practice would be a powerful tool.

USCIS I-9 Central Conveys Answer to Common Question

Q What should I do if an invalid version of Form I-9 was completed for an employee at the time of hire?

A If the wrong version of the Form I-9 was completed when the employee was hired, an employer should try to rectify the error. One way is for the employer and employee to complete the current version of Form I-9, stapling the previously completed Form I-9 to the current version and including explanation of what happened. If this is not practicable, the employer may staple the outdated, but complete I-9, to the current version and sign the current version notating why the current version is attached. In the alternative, the employer may draft a note explaining the situation and attach it to the completed but outdated Form I-9. The employer should be sure to sign and date the note.

To view this and other Q&As please visit I-9 Central Questions & Answers.

Accommodation Required for Religious Beliefs

A Florida nursing and rehabilitation facility will pay $125,000 to settle two religious discrimination lawsuits brought by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced March 12.

The EEOC's suits charged that the company denied a religious accommodation to two certified nursing assistants who were Seventh-day Adventists and fired them because of their religious beliefs. The employer had accommodated the two women's religious needs for at least eight years, until management instituted a policy requiring all employees to work on Saturdays, regardless of their religious beliefs.

Such alleged conduct violates Title VII of the Civil Rights Act of 1964, which prohibits religious discrimination and requires employers to make reasonable accommodations to employees' sincerely held religious beliefs so long as this does not pose an undue hardship.

In the consent decree settling the two lawsuits, the employer agreed to revise its written discrimination policies with respect to religious discrimination and to post anti-discrimination notices at all of its facilities. In addition, the company will conduct anti-discrimination training with all employees, including managers, supervisors, and human resources personnel, with an emphasis on accommodating religion in the workplace.